

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMIE WILSON	:	CIVIL ACTION
	:	
v.	:	
	:	
ACME MARKETS, INC. and MR.	:	
HUTZ (STORE MANAGER) and	:	
ALBERTSON'S, INC.	:	NO. 05-01586-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

May 18, 2005

Plaintiff allegedly suffered injuries in a slip-and-fall accident in a grocery store owned and controlled by the defendants Acme Markets, Inc. and Albertson's, Inc. He brought suit in the Philadelphia Court of Common Pleas against those two entities, and also named as a defendant a gentleman named Hutz, alleged to be the store manager at the time.

Plaintiff is a citizen and resident of Pennsylvania, as is the defendant Hutz. There is some confusion as to the actual citizenship of Acme Markets, Inc. and Albertson's, Inc., although it appears probable that neither is a citizen of Pennsylvania.

The defendants removed the action to this court. In the notice of removal, defendants asserted: (1) The defendant Albertson's, Inc. was incorporated in Delaware and has its principal place of business in Boise, Idaho. (2) Defendant Acme Markets, Inc. is "Acme," which is solely a banner or brand name under which Albertson's, Inc. operates; "the Court should

disregard Acme." (3) Mr. Hutz was fraudulently joined in order to defeat diversity.

Plaintiff filed a motion to remand to the Court of Common Pleas, since both plaintiff and Mr. Hutz are citizens of Pennsylvania. Plaintiff also pointed out that, as recently as October 2003, in another case (Dressner-Beavers v. Acme Markets, et al., June Term, Oct. 1, 2003, Slip Op. 1690, CP Phila. County), Acme Markets, Inc. and Albertson's, Inc. filed an answer in which they alleged "Acme Markets, Inc. maintains its principal business offices at 75 Valley Stream Parkway, Malvern, Pennsylvania."

I have concluded that the case should be remanded to the Philadelphia Court of Common Pleas. Plaintiff's complaint undeniably alleges potentially valid claims against the individual defendant Hutz. The defendants have not met their burden of proving that the allegations against Mr. Hutz are totally unfounded, and were included fraudulently, to preclude removal to federal court. On the present record, I am unable to make a determination as to the amount in controversy, but conclude that remand is necessary because of the absence of complete diversity.

An Order follows.

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ORDER

AND NOW, this 18th day of May 2005, upon consideration of plaintiff's petition to remand, and defendants' responses, IT IS ORDERED:

That plaintiff's motion is GRANTED. This action is REMANDED to the Philadelphia Court of Common Pleas.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.